UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,943	07/24/2003	Joseph V. Rustad	16010-07269	9924

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EXAMINER
JEAN, FRANTZ B

ART UNIT	PAPER NUMBER
2154	

NOTIFICATION DATE	DELIVERY MODE
09/11/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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PTOL-90A (Rev. 04/07)

	Application No.	Applicant(s)
	10/625,943	RUSTAD ET AL.
Office Action Summary	Examiner	Art Unit	
	Frantz B. Jean	2154	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _19 June 2007_.

2a)☒ . This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-29_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-29_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

This office action is in response to applicants' response filed on 06/19/07. Claims 1-29

are still pending in the application.

Response to Arguments

Applicant's arguments with respect to claims 1-29 have been considered but are

moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly
claiming the subject matter which the applicant regards as his invention.

Claims 2 and 19 recite the limitation "the remote network node". There is

insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

Claims 1-29 are rejected under 35 U.S.C. 103(a) as being obvious over Vanlint

US patent Number 6,922,417 in view of Gibart et al. hereinafter Gibart US publication

number 2004/0153534 A1.

The applied reference, Vanlint, has a common assignee with the instant

application. Based upon the earlier effective U.S. filing date of the reference, it

constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a)

might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed

but not claimed in the reference was derived from the inventor of this application and is

thus not an invention "by another"; (2) a showing of a date of invention for the claimed

subject matter of the application which corresponds to subject matter disclosed but not

claimed in the reference, prior to the effective U.S. filing date of the reference under 37

CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application

and reference are currently owned by the same party and that the inventor named in the

application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer

in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing

that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under

35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

As per claim 1, Vanlint teaches a computer system for calculating latency of a network (see abstract), comprising: an active request generator that generates periodic request to a node on the network; an active request log that stores request timing information regarding the timing of the periodic requests generated by the active request generator; a response handler that receives responses from the node; a response log that stores response timing information regarding the timing of the responses received by the response handler; and a latency curve (graphical display output, element 70 fig 3) generator that calculates a latency curve based upon the request timing information and the response timing information (see fig 3, 7-10; col. 2 lines 44-67; col. 3 lines 15-31; col. 4 lines 26-35; col. 5 lines 37-41). However, Vanlint does not explicitly teaches a single active agent (node) configured to transmit requests and receive responses to the requests to generate a single trace file. Gibart is directed to measurements of network delays, which allows control of measurement of network delay from a single node (see paragraph 0013). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine Gibart's measurement of network delay from a single node to Vanlint's system to track, detect and measure excessive delay across the network. One skill artisan at the time of the invention would be motivated to do so to minimize the burden on the network bandwidth when network delay changes at a low rate (see Gibart at par 0015).

As per claim 2, Vanlint teaches requests that are directed to an identified closed port at the node (see col. 3 lines 48-64; col. 10 lines 18-39).

As per claim 3, Vanlint teaches a request decay controller that regulates a wait period ... (see col. 2 lines 44-65).

As per claim 4, Vanlint teaches an active response filter that identifies responses ... (col. 2 lines 59-65, sniffer).

As per claim 5, Vanlint teaches a node data manager that identifies a plurality of nodes on the network ... (see fig 1-2; col 3 lines 15-31).

As per claim 6, Vanlint teaches an outgoing, incoming and a continuous latency calculator ... (see fig 3, and 7-10; col. 2 lines 15-24; col. 6 lines 10-22).

As per claims 7-8, Vanlint teaches self-queuing compensator that adjusts outgoing and incoming latency (see col. 4 lines 36-49).

As per claim 9, Vanlint implicitly teaches minimum latency calculator (see fig 7-10; col. 5 line 57 to col. 6 line 9).

As per claim 10, Vanlint teaches a computer system for calculating latency from transmit times of individuals packets of a network application comprising: an active latency detection module configured to calculate latency data based upon periodic requests to a network node that are denied by the network node; a packet capture module that receives application data packets from the network node related to the network application; a trace data storage module that stores network application and a latency trace generation module that calculates latency of the network application based upon the latency data calculated by the active latency detection module and the network application trace data information (see fig 3, 7-10; col. 2 lines 44-67; col. 3 lines 15-64; col. 4 lines 26-35; col. 5 lines 37-41). However, Vanlint does not expressly teach an

active latency detection module within a single node. Gibart is directed to

measurements of network delays, which allows control of measurement of network

delay from a single node (see paragraph 0013). It would have been obvious to one of

ordinary skill in the art at the time of the invention to combine Gibart's measurement of

network delay from a single node to Vanlint's system to track, detect and measure

excessive delay across the network. One skill artisan at the time of the invention would

be motivated to do so to minimize the burden on the network bandwidth when network

delay changes at a low rate (see Gibart at par 0015).

As per claims 11-29, they contain the same limitations as discussed in claims 1-

10 above. Therefore, they are rejected under the same rationale.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Frantz B. Jean whose telephone number is 571-272-

3937. The examiner can normally be reached on 8:30-6:00   M-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Nathan J. Flynn can be reached on 571-272-1915. The fax phone number

for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Frantz Jean

FRANTZ B. JEAN
PRIMARY EXAMINER